

§ 261.52

participation rate specified at § 261.21, or both rates, and qualifies for a penalty reduction under paragraph (b)(1) of this section, its penalty reduction will be the product of:

(i) The amount determined in paragraph (a)(2) of this section;

(ii) The ratio described in paragraph (b)(3) of this section computed with respect to all families; and

(iii) The adjustment factor described in paragraph (b)(4) of this section.

(7) Pursuant to § 260.58 of this chapter, we will adjust the calculations in this section to exclude cases for which a State has granted federally recognized good cause domestic violence waivers.

(c)(1) If the State was not subject to a penalty the prior year, the State will receive:

(i) The full applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 50 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(2) If the penalty year is the second successive year in which the State is subject to a penalty, the State will receive:

(i) 50 percent of the applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 25 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(3) If the penalty year is the third or greater successive year in which the State is subject to a penalty, the State will not receive a penalty reduction described in paragraph (b)(5) or (b)(6) of this section.

(d)(1) We may reduce the penalty if the State failed to achieve a participation rate because:

(i) It meets the definition of a needy State, specified at § 260.30 of this chapter; or,

(ii) Noncompliance is due to extraordinary circumstances such as a natural disaster, regional recession, or substantial caseload increase.

(2) In determining noncompliance under paragraph (d)(1)(ii) of this sec-

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tion, we will consider such objective evidence of extraordinary circumstances as the State chooses to submit.

§ 261.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?

(a) We will not impose a penalty under this part if we determine that the State has reasonable cause for its failure.

(b) In addition to the general reasonable cause criteria specified at § 262.5 of this chapter, a State may also submit a request for a reasonable cause exemption from the requirement to meet the minimum participation rate in two specific case situations.

(1) We will determine that a State has reasonable cause if it demonstrates that failure to meet the work participation rates is attributable to its provision of federally recognized good cause domestic violence waivers (i.e., it provides evidence that it achieved the applicable work rates when individuals receiving federally recognized good cause domestic violence waivers of work requirements, in accordance with the provisions at §§ 260.54(b) and 260.55 of this chapter, are removed from the calculations in §§ 261.22(b) and 261.24(b)).

(2) We will determine that a State has reasonable cause if it demonstrates that its failure to meet the work participation rates is attributable to its provision of assistance to refugees in federally approved alternative projects under section 412(e)(7) of the Immigration and Nationality Act (8 U.S.C. 1522(e)(7)).

(c) In accordance with the procedures specified at § 262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 261.53 May a State correct the problem before incurring a penalty?

(a) Yes. A State may enter into a corrective compliance plan to remedy a problem that caused its failure to meet a participation rate, as specified at § 262.6 of this chapter.

(b) To qualify for a penalty reduction under § 262.6(j)(1) of this chapter, based

on significant progress towards correcting a violation, a State must reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the rate applicable during the penalty year (adjusted for any caseload reduction credit determined pursuant to subpart D of this part) by at least 50 percent.

§ 261.54 Is a State subject to any other penalty relating to its work program?

(a) If we determine that, during a fiscal year, a State has violated section 407(e) of the Act, relating to imposing penalties against individuals, we must reduce the SFAG payable to the State.

(b) The penalty amount for a fiscal year will equal between one and five percent of the adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

§ 261.55 Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(b) In determining the size of any reduction, we will consider objective evidence of:

(1) Whether the State has established a control mechanism to ensure that the grants of individuals are appropriately reduced for refusing to engage in required work; and

(2) The percentage of cases for which the grants have not been appropriately reduced.

§ 261.56 What happens if a parent cannot obtain needed child care?

(a)(1) If the individual is a single custodial parent caring for a child under age six, the State may not reduce or terminate assistance based on the parent's refusal to engage in required work if he or she demonstrates an inability to obtain needed child care for one or more of the following reasons:

(i) Appropriate child care within a reasonable distance from the home or work site is unavailable;

(ii) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(iii) Appropriate and affordable formal child care arrangements are unavailable.

(2) Refusal to work when an acceptable form of child care is available is not protected from sanctioning.

(b)(1) The State will determine when the individual has demonstrated that he or she cannot find child care, in accordance with criteria established by the State.

(2) These criteria must:

(i) Address the procedures that the State uses to determine if the parent has a demonstrated inability to obtain needed child care;

(ii) Include definitions of the terms "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements"; and

(iii) Be submitted to us.

(c) The TANF agency must inform parents about:

(1) The penalty exception to the TANF work requirement, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care;

(2) The State's process or procedures (including definitions) for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision; and

(3) The fact that the exception does not extend the time limit for receiving Federal assistance.

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§ 261.57 What happens if a State sanctions a single parent of a child under six who cannot get needed child care?

(a) If we determine that a State has not complied with the requirements of § 261.56, we will reduce the SFAG payable to the State by no more than five percent for the immediately succeeding fiscal year unless the State demonstrates to our satisfaction that it